

RETIREMENT SECURITY ADVICE ACT OF 2001

November __, 2001.—Committed to the Committee of the Whole House on the State of the
Union and ordered to be printed

Mr. Thomas, from the Committee on Ways and Means,
submitted the following

REPORT

Together with

DISSENTING VIEWS

[To accompany H.R. 2269]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the tax provisions of a bill (H.R. 2269) to amend title I of the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to promote the provision of retirement investment advice to workers managing their retirement income assets, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

[TO BE SUPPLIED]

I. SUMMARY AND BACKGROUND

A. Purpose and Summary

The tax provisions of the bill, H.R. 2269, as amended (the “Retirement Security Advice Act of 2001”), create a new category of prohibited transaction exemptions for investment advice, the investment of assets, and the receipt of fees in connection with retirement plans and accounts, Archer MSAs, and Coverdell education savings accounts. The bill will facilitate the provision of investment advice in connection with retirement savings and enable workers to better manage their retirement assets.

B. Background and Need for Legislation

The provisions approved by the Committee will facilitate the provision of investment advice in connection with retirement savings.

C. Legislative History

Committee Action

The Committee on Ways and Means marked up the provisions of the bill on November 7, 2001, and ordered the bill reported, as amended, on November 7, 2001, by a roll call vote of 25 yeas and 15 nays, with a quorum present.

II. EXPLANATION OF THE BILL

A. Prohibited Transaction Exemption for the Provision of Investment Advice (sec. 2(b) of the bill and sec. 4975 of the Code)

Present Law

Present law prohibits certain transactions between an employee benefit plan and a disqualified person.¹ Disqualified persons include a fiduciary of the plan, a person providing services to the plan, and an employer with employees covered by the plan. For this purpose, a fiduciary includes any person who (1) exercises any authority or control respecting management or disposition of the plan’s assets, (2) renders investment advice for a fee or other compensation with respect to any plan moneys or property, or has the authority or responsibility to do so, or (3) has any discretionary authority or responsibility in the administration of the plan.

Prohibited transactions include (1) the sale, exchange or leasing of property, (2) the lending of money or other extension of credit, (3) the furnishing of goods, services or facilities, (4) the transfer to, or use by or for the benefit of, the income or assets of the plan, (5) in the case of a fiduciary, any act that deals with the plan’s income or assets for the fiduciary’s own interest or account, and (6) the receipt by a fiduciary of any consideration for the fiduciary’s own

¹ Similar rules apply under the Employee Retirement Income Security Act of 1974 (“ERISA”).

personal account from any party dealing with the plan in connection with a transaction involving the income or assets of the plan. However, certain transactions are exempt from prohibited transaction treatment, for example, certain loans to plan participants.

If a prohibited transaction occurs, the disqualified person who participates in the transaction is subject to a two-tier excise tax. The first level tax is 15 percent of the amount involved in the transaction. The second level tax is imposed if the prohibited transaction is not corrected within a certain period and is 100 percent of the amount involved. The prohibited transaction rules apply to a qualified retirement plan, a qualified retirement annuity, an individual retirement account or annuity, an Archer MSA, or a Coverdell education savings account.

Reasons for Change

The Committee believes that providing prohibited transaction exemptions will facilitate the provision of investment advice to individuals who are responsible for directing the investment of their retirement assets.

Explanation of Provision

The provision adds a new category of prohibited transaction exemptions in connection with the provision of investment advice with respect to plan assets for a fee if (1) the investment of plan assets is subject to the direction of plan participants or beneficiaries, (2) the advice is provided to the plan or a participant or beneficiary by a fiduciary advisor in connection with a sale, acquisition or holding of a security or other property (an “investment transaction”) for purposes of investment of plan assets, and (3) certain other requirements are met. Under the provision, the following are exempt from prohibited transaction treatment: (1) the provision of investment advice to the plan, participant or beneficiary, (2) an investment transaction (including any lending of money or other extension of credit associated with the investment transaction) pursuant to the advice, and (3) the direct or indirect receipt of fees or other compensation by a fiduciary advisor or affiliate (or any employee, agent or registered representative of the fiduciary advisor or affiliate) in connection with the provision of the advice or an investment transaction pursuant to the advice.

Under the provision, certain requirements must be met in order for the exemption to apply. When initially providing advice about a security or other property, the fiduciary advisor must provide to the recipient of the advice, on a reasonably contemporaneous basis, written notification of specified information (discussed below) as well as any disclosure required in connection with the investment transaction under any applicable securities laws. In addition, the investment transaction must occur solely at the direction of the recipient of the advice; the compensation received by the advisor and affiliates in connection with the investment transaction must be reasonable; and the terms of the investment transaction must be at least as favorable as an arm’s length transaction would be.

The written notification required to be provided by the fiduciary advisor must include information about the following: (1) all fees or compensation to be received by the advisor or an affiliate (including from a third party) in connection with the advice or the investment

transaction, (2) any material affiliation or contractual relationship of the advisor or affiliates in the security or other property involved in the investment transaction, (3) any limitation to be placed on the scope of the investment advice, (4) the types of services provided by the advisor in connection with the provision of investment advice, and (5) the advisor's status as a fiduciary of the plan in connection with the provision of the advice. The written notification can be provided electronically. In addition, in connection with the initial advice or subsequent advice, the required information must be provided in currently accurate form at least annually and also when requested by the recipient of the advice and when there is a material change in the information. Any notification (or currently accurate information) must be written in a clear and conspicuous manner, calculated to be understood by the average plan participant, and be sufficiently accurate and comprehensive reasonably to apprise participants and beneficiaries of the required information.

The fiduciary advisor must maintain for at least six years any records necessary for determining whether the requirements for the prohibited transaction exemption were met. A prohibited transaction will not be considered to have occurred merely because records were lost or destroyed before the end of six years due to circumstances beyond the advisor's control.

For purposes of the provision, "fiduciary advisor" is defined as a person who is a fiduciary of the plan by reason of the provision of investment advice to the plan, a participant or beneficiary and who is also (1) registered as an investment advisor under the Investment Advisors Act of 1940 or under State laws, (2) a bank or similar financial institution supervised by the United States or a State, (3) an insurance company qualified to do business under State law, (4) registered as a broker or dealer under the Securities Exchange Act of 1934, (5) an affiliate of any of the preceding, or (6) an employee, agent or representative of any of the preceding who satisfies the requirements of applicable insurance, banking and securities laws relating to the provision of advice. "Affiliate" means an affiliated person as defined under section 2(a)(3) of the Investment Company Act of 1940. "Registered representative" means a person described in section 3(a)(18) of the Securities Exchange Act of 1934 or a person described in section 202(a)(17) of the Investment Advisors Act of 1940.

Effective Date

The provision is effective with respect to investment advice provided on or after January 1, 2002.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 2269.

MOTION TO REPORT THE BILL

The bill, H.R. 2269, as amended, was ordered favorably reported by a roll call vote of 25 yeas to 15 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas.....	X			Mr. Rangel.....		X	
Mr. Crane.....	X			Mr. Stark.....		X	
Mr. Shaw.....	X			Mr. Matsui.....		X	
Mrs. Johnson.....	X			Mr. Coyne.....		X	
Mr. Houghton.....	X			Mr. Levin.....		X	
Mr. Herger.....	X			Mr. Cardin.....		X	
Mr. McCrery.....	X			Mr. McDermott.....		X	
Mr. Camp.....	X			Mr. Kleczka.....		X	
Mr. Ramstad.....	X			Mr. Lewis (GA).....		X	
Mr. Nussle.....				Mr. Neal.....	X		
Mr. Johnson.....	X			Mr. McNulty.....		X	
Ms. Dunn.....	X			Mr. Jefferson.....		X	
Mr. Collins.....	X			Mr. Tanner.....	X		
Mr. Portman.....	X			Mr. Becerra.....		X	
Mr. English.....	X			Mrs. Thurman.....		X	
Mr. Watkins.....	X			Mr. Doggett.....		X	
Mr. Hayworth.....	X			Mr. Pomeroy.....		X	
Mr. Weller.....	X						
Mr. Hulshof.....	X						
Mr. McInnis.....	X						
Mr. Lewis (KY).....	X						
Mr. Foley.....	X						
Mr. Brady.....	X						
Mr. Ryan.....	X						

IV. BUDGET EFFECTS OF THE BILL

A. Committee Estimate of Budgetary Effects

In compliance with clause 3(d)(2) of the rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of the revenue provisions of the bill, H.R. 2269 as reported.

The bill is estimated to have the following effects on budget receipts for fiscal years 2002-2006:

**ESTIMATED BUDGET EFFECTS OF THE REVENUE PROVISIONS CONTAINED IN H.R. 2269,
THE "RETIREMENT SECURITY ADVICE ACT OF 2001,"
AS REPORTED BY THE COMMITTEE ON WAYS AND MEANS**

Fiscal Years 2002 - 2006

[Millions of Dollars]

Provision	Effective	2002	2003	2004	2005	2006	2002-06
Add a new category of prohibited transaction exemption for investment advice, certain investments of plan assets, and the receipt of fees in connection with the advice or investments	iapo/a 1/1/02	----- Negligible Revenue Effect -----					

Joint Committee on Taxation

NOTE: Details may not add to totals due to rounding.

Legend for "Effective" column: iapo/a = investment advice provided on or after

B. Statement Regarding New Budget Authority and Tax Expenditures Budget Authority

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that the bill involves no new or increased budget authority. The Committee further states that the bill does not involve increased tax expenditures.

C. Cost Estimate Prepared by the Congressional Budget Office

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the CBO, the following statement by CBO is provided.

[Insert CBO letter (to be supplied)]

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. Committee Oversight Findings and Recommendations

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that it was a result of the Committee's oversight review concerning retirement security that the Committee concluded that it is appropriate and timely to enact the revenue provision included in the bill as reported.

B. Statement of General Performance Goals and Objectives

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for any measure that authorizes funding is required.

C. Constitutional Authority Statement

With respect to clause 3(d)(1) of the rule XIII of the Rules of the House of Representatives (relating to Constitutional Authority), the Committee states that the Committee's action in reporting this bill is derived from Article I of the Constitution, Section 8 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises. . ."), and from the 16th Amendment to the Constitution.

D. Information Relating to Unfunded Mandates

This information is provided in accordance with section 423 of the Unfunded Mandates Act of 1995 (P.L. 104-4).

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.



CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, DC 20515

IV. C.

Dan L. Crippen
Director

November 9, 2001

Honorable William "Bill" M. Thomas
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2269, the Retirement Security Advice Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Geoffrey Gerhardt, who can be reached at 226-2820.

Sincerely,

for Dan L. Crippen

Enclosure

cc: Honorable Charles B. Rangel
Ranking Democrat



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

November 9, 2001

H.R. 2269 **Retirement Security Advice Act of 2001**

*As ordered reported by the House Committee on Ways and Means
on November 7, 2001*

H.R. 2269 would amend the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code so that employer-sponsored retirement plans may provide plan participants with direct access to fiduciary advisers. Under current law, employers may not provide participants in their retirement plans with direct access to financial advisers for the purpose of providing individual investment advice.

The Congressional Budget Office and the Joint Committee on Taxation estimate that H.R. 2269 would have a negligible effect on federal spending and revenues. This version of the bill is similar to the version approved by the House Committee on Education and the Workforce on October 3, 2001, and our estimate is unchanged. Because H.R. 2269 would affect receipts, pay-as-you-go procedures would apply to the bill.

In modifying provisions of ERISA and the Internal Revenue Code, the legislation also would establish certain requirements that must be followed by advisers who are provided by plan sponsors. H.R. 2269 would require that fiduciary advisers must disclose to employees all fees, as well as any financial holdings or potential conflicts that could affect their investment advice. Fees collected though such advice would not be subject to the excise taxes imposed by section 4975 of the Internal Revenue Code. The bill would also require advisers to act in the best financial interest of the employee and to maintain records related to such advice for at least six years.

H.R. 2269 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Geoffrey Gerhardt, who can be reached at 226-2820. The estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

E. Applicability of House Rule XXI 5(b)

Rule XXI 5(b) of the Rules of the House of Representatives provides, in part, that “A bill or joint resolution, amendment, or conference report carrying a Federal income tax rate increase may not be considered as passed or agreed to unless so determined by a vote of not less than three-fifths of the Members voting, a quorum being present.” The Committee has carefully reviewed the provisions of the bill, and states that the provisions of the bill do not involve any Federal income tax rate increases within the meaning of the rule.

F. Tax Complexity Analysis

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the “IRS Reform Act”) requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of Treasury) to provide a tax complexity analysis. The complexity analysis is required for all legislation reported by the House Committee on Ways and Means, the Senate Committee on Finance, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code and has widespread applicability to individuals or small businesses.

The staff of the Joint Committee on Taxation has determined that a complexity analysis is not required under section 4022(b) of the IRS Reform Act because the bill contains no provisions that amend the Internal Revenue Code and that have “widespread applicability” to individuals or small businesses.

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rule of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

[TO BE SUPPLIED BY LEGISLATIVE COUNSEL’S OFFICE]

VII. DISSENTING VIEWS

[TO BE SUPPLIED]